

Message Text

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C O N F I D E N T I A L HONG KONG 3974

NOFORN

E.O. 11652: GDS

TAGS: EIND CH JA

SUBJ: TALKS ON SINO-JAPANESE TRADEMARK AGREEMENT

SUMMARY. PRC AND JAPAN HAVE QUIETLY BEGUN TALKS ABOUT A TRADEMARK AGREEMENT. THE CHINESE FAVOR AN EXCHANGE OF NOTES WHILE THE JAPANESE FEEL A FORMAL AGREEMENT OR TREATY IS NECESSARY. THE TALKS WERE PRELIMINARY IN NATURE AND NEITHER SIDE APPEARS TO BE IN A HURRY TO CONCLUDE AN AGREEMENT. END SUMMARY.

1. THE PRC AND JAPAN HAVE QUIETLY BEGUN TALKS LOOKING TOWARD A TRADEMARK AGREEMENT BETWEEN THE TWO COUNTRIES. ACCORDING TO A HK JAPANESE CONGENOFF, A MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY DELEGATIO RETURNED FROM PEKING LAST WEEK AFTER DISCUSSIONS WITH THE LEGAL AFFAIRS DIVISION OF THE CCPIT AND REPRESENTATIVES FROM THE PRC TRADEMARK OFFICE. THE TALKS WERE PRELIMINARY IN NATURE, AND NEITHER SIDE IS IN A HURRY TO CONCLUDE AN AGREEMENT.

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2. IN THIS INITIAL ROUND, DISCUSSIONS FOCUSED ON THE FORM OF THE AGREEMENT AND DIFFERENCES IN DOMESTIC REQUIREMENTS FOR TRADEMARK REGISTRATION. THE CHINESE FAVOR A SIMPLE EXCHANGE OF NOTES, A PROCEDURE USED PREVIOUSLY WITH THE CANADIANS AND OTHERS. THE JAPANESE FEEL THAT A FORMAL GOVERNMENTAL AGREEMENT OR TREATY IS NECESSARY TO RESOLVE INEQUALITIES BETWEEN ITS OWN AND THE PRC'S REQUIREMENTS FOR TRADEMARK REGISTRATION.

3. UNDER CHINESE LAW A FOREIGN FIRM MUST HAVE COMPLETED THE REGISTRATION OF ITS TRADEMARK IN ITS OWN COUNTRY BEFORE APPLYING FOR REGISTRATION IN CHINA. REGISTRATION PROCEDURES IN JAPAN ARE OFTEN PROTRACTED AND THUS JAPANESE FIRMS COULD FACE LONG DELAYS BEFORE BEING ELIGIBLE TO APPLY FOR TRADEMARK PROTECTION IN THE PRC. JAPAN'S TRADEMARK LAW PROVIDES FOR NATIONAL TREATMENT SO CHINESE STATE TRADING CORPORATIONS WOULD NOT FACE SIMILAR OBSTACLES TO SPEEDY INITIATION OF APPLICATIONS FOR TRADEMARK REGISTRATION.

4. COMMENT. TRADEMARK PROTECTION IS ONLY EXTENDED TO FOREIGN FIRMS WHOSE COUNTRIES HAVE BILATERAL AGREEMENTS WITH THE PRC. SINCE US TRADEMARK LAWS ARE ALSO LIBERAL IN REGARD TO FOREIGN APPLICANTS, WE WOULD FACE PROBLEMS SIMILAR TO JAPAN IN ANY FUTURE NEGOTIATIONS.
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